

## MEMORANDUM OF LAW

DATE: May 5, 1992

TO: Salvatore Giametta, Assistant to the Mayor

FROM: City Attorney

SUBJECT: Tanabe Research Laboratories USA, Inc., Donation  
for Central Library/Conflict of Interest Questions

John Kaheny has asked me to respond to your memorandum of April 20, 1992, to him containing questions about the Tanabe Research Laboratories USA, Inc. ("Tanabe") proposed donation to the City for central library facilities.

By way of background, I note that Tanabe has offered fifteen thousand dollars (\$15,000) to the City for the proposed new central library. You attach a copy of Tanabe's check to your memorandum. The check is made out to the "Central Library Fund, City of San Diego," in care of the Office of the Mayor, addressed to the City Administration Building at 202 "C" Street, San Diego, CA 92101. It was enclosed with a letter to the Mayor signed by the President and Chief Executive Officer of Tanabe stating that the check is for the "building fund for the New Central Library."

You also note in your memorandum that Tanabe has been before Council several times recently as a proposed buyer in a negotiated sale of City-owned property (a 3-4 acre parcel) in the Eastgate Technology Park. You note specifically that the Mayor's office received the check on April 2, 1992, and that the City Council approved the negotiated sale to Tanabe by a 5-1 vote on April 6, 1992. The Mayor was not present during the vote; although she had been present at Council meeting on October 7, 1991, and had voted then to approve the City Manager's recommendation to approve the sale. The Manager's recommendation was approved by a 7-1 vote that day.

You ask whether the Mayor or the City has a conflict of interest in accepting the donation. Tanabe's check for fifteen thousand dollars (\$15,000) is being held pending this review.

In my opinion, neither the Mayor nor the City has a conflict of interest in accepting the fifteen thousand dollars (\$15,000) donation for the reasons stated below. The issues presented raise questions under the Political Reform Act of 1974

(codified at Gov't Code section 81000 et seq.). Under this Act, a conflict of interest exists for a public official, such as the Mayor, only if the public official's economic interests are affected. Gov't Code section 87100. Economic interests include investment, real property, or income interests. Gov't Code section 87103. Income includes gifts of \$250 or more. Gov't Code section 87103(e).

The first question presented is whether the Tanabe donation will be considered a gift or income to the Mayor. The answer is clearly "no." The check itself is made out to "the Central Library Fund, City of San Diego." Also, according to the letter from Tanabe's President and Chief Executive Officer, the donation is for the express purpose of the "building fund for the New Central Library." The mere fact that the check was delivered to the Mayor's office does not make the check a gift or income to her. Essentially, she has no economic interest resulting from receiving the check; and, therefore she has no conflict of interest.

The City itself also has no conflict of interest in receiving the Tanabe donation. The conflict of interest provisions of the Political Reform Act govern only public officials, not public entities, such as the City. The City has no conflict of interest under the Political Reform Act if it receives and accepts the donation from Tanabe. City Council Policy 100-2 (copy attached) governs receipt of restricted personal property donations. The policy requires that the proposed conditions on the donation be reviewed to "determine if the benefits to be derived warrant the acceptance of the donation." The policy does not address conflict of interest issues; and, whether the City decides to keep the proposed donation in light of the facts surrounding the sale of City property to Tanabe is a matter of policy for the Council to resolve.

JOHN W. WITT, City Attorney

By

Cristie C. McGuire

Deputy City Attorney

CCM:jrl:011(x043.2)

Attachment

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